IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 979/2006
(Bharat Singh Solanki Vs. State of Rajasthan & Anr.)

Date of Order : 16/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Haider Agha for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. Iqbal Sherani for the non-petitioner No.2 complainant.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner seeks quashing of proceeding in Criminal Case No.40/02 pending in the Court of Chief Judicial Magistrate Jodhpur (for short 'the trial court' hereinafter) on the ground that the parties have compromised the matter and a compromise was filed before the trial court. But the trial court did not accept the compromise on the ground that the offence is not compoundable.

The petitioner and the non-petitioner No.2 complainant are present in the Court and submit that the matter

has been settled amicably between them. The non-petitioner No.2 complainant submits that since the matter has been settled amicably, therefore, she does not want to prosecute the case instituted by her against her husband and they may be permitted to compound the offence and by compounding the offence the proceedings may be quashed. They have filed a compromise to this effect before this Court also which is on record. An affidavit has also been filed by the non-petitioner No.2 before this Court stating therein that the parties have settled the matter amicably and by mutual consent she had already obtained a decree of divorce under Section 13-B of the Hindu marriage Act on 15.6.2006 passed by Family Court, Jodhpur. The non-petitioner No.2 complainant also stated that she has already solemnized second marriage.

In B.S.Joshi and Others Vs. State of Haryana and Another (2003) 4 SCC 675, Hon'ble Supreme Court held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 Cr.P.C. Hon'ble Supreme Court further held that in the instant case, the wife filed an affidavit

that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It has also been held by Hon'ble Supreme Court that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier and that would be against the object of S.498-A.

Keeping in view, the decision of Hon'ble Supreme Court in B.S.Joshi and Others Vs. State of Haryana and Another (supra) and the fact that the parties have resolved their dispute amicably and non-petitioner No.2 complainant in the case states that she has solemnized second marriage and she does not wish to prosecute her former husband in the proceedings initiated by her, in my view, no useful purpose would be served to allow such a proceeding in which no evidence is likely to come against the petitioner No.1 who is facing trial and to allow the proceeding to continue any more would be nothing but an abuse of the process of the Court and therefore, to secure the ends of justice, the proceeding against the petitioner deserves to be quashed on

being compounded by non-petitioner No.2 complainant.

In the result, the criminal misc. petition is allowed. The criminal proceeding in Criminal Case No. 40/02 pending before Chief Judicial Magistrate, Jodhpur against the petitioner stands quashed.

(H.R.PANWAR),J.

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